

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

JEAN DAVILMAR,

*Defendant-Petitioner.*

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 2023/03/16

**99 Cr. 605 (VEC)**

**Order re: Attorney-Client Privilege Waiver (Informed Consent)**

WHEREAS Jean Davilmar (“Petitioner”) has filed a petition for a writ of error *coram nobis*, seeking to vacate his conviction under 18 U.S.C. § 371 based on allegations of ineffective assistance of counsel by her former defense counsel (the “Petition”); and

WHEREAS former defense counsel of Davilmar include Mark L. Amsterdam, James Branden, Gary Becker, and Valerie Amsterdam (“Prior Counsel”); and

WHEREAS the Government, after reviewing the motion papers, has concluded that the testimony of Prior Counsel will be needed to allow the Government to respond to the petition; and

WHEREAS the Court, after reviewing the motion papers, is satisfied that the testimony of Counsel is needed to allow the Government to respond to the petition; and

WHEREAS by filing the petition, Petitioner has waived the attorney-client privilege as a matter of law; and

WHEREAS the Court is cognizant that, absent court order, ethical concerns may inhibit Prior Counsel from disclosing confidential information relating to a prior client even in the absence of a privilege, *see, e.g.*, ABA Standing Comm. on Ethics and Prof. Responsibility Formal Op. 10-456 (July 14, 2010), *Disclosure of Information to Prosecutor When Lawyer’s Former Client Brings Ineffective Assistance of Counsel Claim*,

IT IS HEREBY ORDERED that Petitioner Jean Davilmar execute and return to this court within 30 days ~~14 days~~ from today's date the accompanying "Attorney-Client Privilege Waiver (Informed Consent)" form. If the document is not received by the Court within 30 days ~~14 days~~ from today's date, the court will deny the Petition, on the ground that the Petitioner failed to authorize the disclosure of information needed to permit the Government to respond to the petition; and it is further

ORDERED that within 14 days of the Court's receipt and publishing to ECF of Petitioner Davilmar's executed "Attorney-Client Privilege Waiver (Informed Consent)" form, Messrs. Amsterdam, Branden, and Becker, and Ms. Amsterdam, shall give sworn testimony, in the form of an affidavit or affirmation, addressing the allegations of ineffective assistance of counsel made by Petitioner; and it is further


ORDERED that the Government shall be permitted 30 days from the receipt of said executed affidavits or affirmations from Messrs. Amsterdam, Branden, and Becker, and Ms. Amsterdam, to file its opposition and any additional supporting papers with this Court; and it is further

ORDERED that the Clerk of the Court serve a copy of this Order on Petitioner Davilmar, Messrs. Amsterdam, Branden, and Becker, and Ms. Amsterdam.

Petitioner will have 14 days to reply to the Government's response once it is filed. The deadlines set forth in the Court's February 15, 2023 Order at Dkt. 57 no longer apply.

Dated: New York, New York

03/16/2023

  
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HON. VALERIE E. CAPRONI  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

JEAN DAVILMAR,

*Defendant-Petitioner.*

**99 Cr. 605 (VEC)**

**Attorney-Client Privilege Waiver (Informed Consent)**

To: Petitioner Jean Davilmar:

You have filed a petition for a writ of error *coram nobis*, to have your conviction vacated on the ground that you received ineffective assistance from your former counsel, which includes Mark L. Amsterdam, James Branden, Gary Becker, and Valerie Amsterdam (referred to in this form as “your Prior Counsel”). The Court has reviewed your papers and determined that it needs to have a sworn testimonial statement from your Prior Counsel in order to evaluate your motion.

By making this motion, you have waived the attorney-client privilege you had with your Prior Counsel to the extent relevant to determining your claim. This means that if you wish to press your claim of ineffective assistance, you cannot keep the communications between yourself and your Prior Counsel a secret—you must allow them to be disclosed to the Government and to the Court pursuant to court order. The Court has already issued an Order (copy attached) ordering your Prior Counsel to give such testimony, in the form of an affidavit. This Informed Consent form is designed to ensure that you fully understand and agree to this.

Specifically, if you wish to proceed with your petition to vacate your conviction on the basis that you received ineffective assistance of counsel, you must sign this statement and return it to the Court. The form constitutes your authorization to your former attorney to disclose confidential communications (1) only in response to a court order and (2) only to the extent necessary to shed light on the allegations of ineffective assistance of counsel that are raised by your motion.

You should know that if you sign this authorization, you run the risk that your former attorney will contradict your statements about his or her representation of you. However, you should also know that the Court will deny your motion if you do not authorize your Prior Counsel to give an affidavit in response to the Court’s attached Order.

You must return this form, signed by you and notarized, within fourteen (14) days from the date of the Court’s Order directing your Prior Counsel to give testimony. If the Court does not receive this form, signed by you and notarized, within that time, the Court will automatically deny your motion.

# NOTARIZED AUTHORIZATION

I have read the Court's Order dated 03/16/2023 and this document headed Attorney-Client Privilege Waiver (Informed Consent). I hereby authorize my Prior Counsel, Mark L. Amsterdam, James Branden, Gary Becker, and Valerie Amsterdam, to comply with the Court's Order by giving testimony, in the form ordered by the Court, relating to my motion to set aside my conviction on the ground of ineffective assistance of counsel. This authorization allows my Prior Counsel to testify only pursuant to court order, and only to the extent necessary to shed light on the allegations of ineffective assistance of counsel that are raised by my motion.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public